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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/592,940

09/15/2006

Lamberto Carta

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8690

466 7590 03/25/2008

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EXAMINER

NGUYEN, DINH Q

ART UNIT

PAPER NUMBER

3752

MAIL DATE

DELIVERY MODE

03/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/592,940	Applicant(s) CARTA, LAMBERTO	
	Examiner Dinh Q. Nguyen	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The newly added limitation "defined by a portion of the liquid conduit, by an inner portion of the screw-on cap and by the cylindrical wall" is not disclosed in the specification.
3. For the purpose of this Office action, the claims will be examined as best understood by the examiner.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito (U.S. Patent No. 4,432,496) in view of Gross et al. as best understood by the examiner.

Ito discloses an adjustable and sealable jet nebulizer for bottles able to be elastically deformed by squeezing, able to be mounted on a mouth of a neck 11 of a bottle

10 and comprising a conduit 32 for the liquid that connected by means of a check valve 30, to a suction tube 46 which draws in a liquid contained inside the bottle 10 under a volume of air, and a conduit for the air 22/23 communicating with the volume of air of the bottle 10 through air passage 26, surrounding the conduit for the liquid 32 and ending, together with the conduit for the liquid 32 into a mixing chamber communicating with the exterior through a central exhaust orifice 42, wherein the conduit for the air 22/23 and the conduit for the liquid 32 are obtained coaxially in a cylindrical body 20, having in its portion projecting from the mouth of the bottle neck 11, an external thread to be engaged with an internal counter-thread obtained in a screw-on cap 40, provided with the central exhaust orifice 42, a mixing chamber 43, an arm 24 oriented upwards bearing at its free end a tip cap able to be inserted into the central exhaust orifice 42 of the screw-on cap 40 is screwed onto the cylindrical body 20, until sealing the nebulizer. Ito does not teach a cylindrical wall on the screw cap that is inserted between the air conduit and the liquid conduit to create a mixing chamber with a variable geometry, and the air conduit and the liquid conduit are coaxially in a cylindrical body. However, Gross et al. teaches a squeezable bottle 10 having a nebulising dispensing head 30, a cap 100 with a cylindrical wall 110 that is inserted between an air channel 38 and a liquid channel 42 with an arm 53 and a tip cap 48, thus forming a mixing chamber with a variable geometry (not numbered and bound by cylindrical wall 110 see figures 3), a smaller mixing chamber 116 with a central exhaust orifice 108, wherein the air channel 38 and a liquid channel 42 are coaxially in a cylindrical body 32, a mutual contrast means 107 to prevent the complete unscrewing of the cap 100 (see figure 3). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Ito with a cylindrical wall on the screw cap that is inserted

between the air conduit and the liquid conduit to create a mixing chamber as suggested by Gross et al. Doing so would provide a way to form a mixing chamber with a variable geometry.

Response to Arguments

6. Applicant's arguments filed 12/05/07 have been fully considered but they are not persuasive in view of Gross et al. that teaches a cylindrical wall on the screw cap that is inserted between the air conduit and the liquid conduit to create a mixing chamber with a variable geometry, and the air conduit and the liquid conduit are coaxially in a cylindrical body

7. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of Gross et al.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dinh Q Nguyen/
Primary Examiner, Art Unit 3752

dqn